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BROOKLYN OFFICE

Defendants.

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PLC is not the successor to B.A.T. Industries. In the 1998 restructuring, PLC did not assume or succeed to any liabilities of B.A.T. Industries or otherwise become liable for B.A.T. Industries' conduct under a theory of successor liability. *See* Restatement (Third) of Torts: Product Liability § 12 (discussing when successor liability attaches). B.A.T. Industries continues to exist today.

Plaintiffs' allegations that PLC substantially participated in the management and control of Brown & Williamson are unsupported. There is no evidence that PLC exercised dominion or control over Brown & Williamson. Rather, appropriate corporate formalities between PLC and its subsidiaries were observed; PLC and its subsidiaries have operated as separate and distinct corporate entities.

In a letter dated August 12, 2005 (Docket No. 517), the parties informed the court that by stipulation PLC would be dismissed from the action and B.A.T. Industries would be substituted as a defendant. In *Falise v. American Tobacco Co.*, No. 99-CV-7392 (E.D.N.Y.), *Raymark Industries, Inc. v. American Tobacco Co.*, No. 98-CV-675 (E.D.N.Y.) and *H.K. Porter Co., Inc. v. American Tobacco Co.*, No. 97-CV-7658 (E.D.N.Y.), this court granted summary judgment to plaintiffs on the issue of personal jurisdiction over B.A.T. Industries. In a stipulation and proposed order, the parties here agreed to apply this court's orders in those past cases as though they were issued in the present case, Stip. & Order ¶ 6 (Docket No. 517), with B.A.T. Industries reserving its appellate rights with respect to those orders. *Id.* ¶ 7. The court adopts that proposed order.


In *Simon v. Philip Morris*, 86 F. Supp. 2d 95 (E.D.N.Y. 2000) and *Nat'l Asbestos Workers Medical Fund v. Philip Morris, Inc.*, 86 F. Supp. 2d 137 (E.D.N.Y. 2000), among other

cases, this court denied B.A.T. Industries' motions for dismissal based on the evidence submitted by plaintiffs in those cases. B.A.T. Industries does not challenge those rulings now. Def. PLC's Mem. 3 n.2 (Docket No. 444).

In view of the stipulation there is no need to consider the applicability of New York Civil Practice Law and Rules § 302(a)(3) upon which plaintiffs relied for jurisdiction over PLC.

PLC's motion to dismiss is granted. B.A.T. Industries remains in the case.

SO ORDERED.


Jack B. Weinstein

Dated: September 26, 2005
Brooklyn, New York